

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ERNEST MURPHY,

Defendant.

No. 18-cr-373-11 (RJS)

ERNEST MURPHY,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

No. 23-cv-1937 (RJS)

ORDER

RICHARD J. SULLIVAN, Circuit Judge:

Pending before the Court is Ernest Murphy’s motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (*See* No. 18-cr-373-11, Doc. No. 965; No. 23-cv-1937, Doc. No. 6.) On June 26, 2023, the Court stayed Murphy’s section 2255 proceedings pending the Second Circuit’s resolution of his appeal from this Court’s order denying his motion under Rule 33 of the Federal Rules of Criminal Procedure. (*See* No. 18-cr-373-11, Doc. No. 979). The Second Circuit affirmed the denial of Murphy’s Rule 33 motion on July 2, 2024, (*see* No. 18-cr-373-11, Doc. No. 1085), the mandate was issued on December 16, 2024, (*see id.*), and the Supreme Court denied Murphy’s petition for certiorari on March 10, 2025 (*see* No. 18-cr-373-11, Doc. No. 1093). Murphy now moves to lift the stay on the section 2255 proceedings and for leave to amend his section 2255 motion following the revelation of “[p]reviously unknown information . . . during the Rule 33 proceedings.” (*See id.*) The request is GRANTED. IT IS HEREBY ORDERED THAT

Murphy shall submit an amended motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 along with his opening brief by August 29, 2025. The government shall respond by September 29, 2025. Murphy shall file his reply, if any, by October 29, 2025.

Moreover, to the extent Murphy seeks discovery and expansion of the record under Rules 6 and 7 of the Rules Governing Section 2255 Proceedings (*see* No. 18-cr-373-11, Doc. Nos. 1097, 1096), those requests are denied without prejudice to renewal. Such requests are generally not made until a movant has filed his section 2255 motion. *See Bracy v. Gramley*, 520 U.S. 899, 904 (1997) (“*Before* addressing whether petitioner is entitled to discovery under [Rule 6] . . . , we must first identify the essential elements of [the] claim.” (emphasis added and internal quotation marks omitted)); *United States v. Alaga*, 99 F.3d 400 (2d Cir. 1995) (unpublished table decision) (upholding a district court’s denial of a section 2255 petitioner’s discovery request when the petitioner filed his request before filing a section 2255 petition); *see also* Rules Governing Section 2255 Proceedings, Rule 7 (providing that “[i]f the motion is not dismissed, the judge may direct the parties to expand the record”). Because Murphy is amending his section 2255 motion, he should make his requests for discovery and expansion of the record at the same time he submits his amended section 2255 motion and explain why the Court should grant such requests in light of the arguments made in his amended section 2255 motion. The Clerk of Court is respectfully directed to mail a copy of this order to Murphy and to terminate the motions currently pending at document numbers 965, 1093, 1096, and 1097.

SO ORDERED.

Dated: July 15, 2025
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation